LIEW KON KIOW (f) v. PUBLIC PROSECUTOR

[C. A. (Willan C.J., Taylor and Spenser Wilkinson JJ.) November 12, 1949]

[K. L. — F.M. Criminal Appeal No. 89 of 1949]

Evidence Enactment (Cap. 10), s. 17(2) — Confession — Wrongful admission in evidence of confession made while in custody — No substantial miscarriage of justice — Courts Ordinance, 1948, s. 27.

In this case the appellant was convicted on a charge of consorting with another person who was carrying arms and ammunition. At the trial evidence was given of a statement alleged to be made by the appellant to the wounded man as follows: "Tai Kuai, you have been shot by the Police and I have been arrested — good-bye".

Held: (1) the statement was a confession and being made while the appellant was in the custody of the police, it was inadmissible in evidence; (2) no substantial miscarriage of justice occurred in this case by reason of the admission of the statement and therefore the appeal was dismissed under the powers given in the proviso to s. 27 of the Courts Ordinance, 1948.

Per curiam: Evidence of the fact that the appellant spoke to the wounded man first and that she spoke in Mandarin was admissible, even if evidence of the words spoken was inadmissible.

COURT OF APPEAL (CRIMINAL).

The facts appear sufficiently from the judgment of the Court of Appeal delivered by :—

Spenser Wilkinson J. : —The appellant was charged before the High Court at Seremban that on or about the 23rd August, 1949, she consorted with another person named Lim Wei Yin alias Tai Kuai who was carrying arms and ammunition contrary to the provisions of Regulation 4 of the Emergency Regulations, 1948, in circumstances which raised a reasonable presumption that she intended to act with the said Tai Kuai in a manner prejudicial to the maintenance of public safety. On this charge the appellant was convicted and sentenced to seven years' penal servitude.

The facts were that at about 5 p.m. on the day in question an Assistant Superintendent of Police in charge of two jungle squads proceeded to an isolated squatter's house near the third mile on the Labu Road for the purpose of screening operations. The police surrounded the hut and as they were approaching it three Chinese came to the door of the house and upon seeing the police party immediately started to run. Of these Chinese who ran, two were men and the third a woman the appellant. The Assistant Superintendent of Police shouted to them to stop, without result, and he fired at one of the two men, who was wearing two conspicuous green pouches and a holster. This man was wounded and fell and proved to have a hand-grenade and ammunition in one of the pouches and a revolver in the holster attached to his waist. Meanwhile a Malay Sergeant chased the woman who had come out of the house, caught her and brought her back to where the Assistant Superintendent of Police was standing to the wounded man. The second Chinese man was caught and arrested after having been seen throwing away a revolver. It is not clear from the evidence whether the revolver carried by this man was carried conspicuously about his person or hidden in his clothing.

The Assistant Superintendent of Police gave evidence that when the appellant was brought near to the wounded man she spoke to him "in a dialect which sounded like Chinese" and that although he did not understand what was said it was quite obvious to him that the appellant knew the wounded man. In cross-examination on this point he said he judged that the accused knew the wounded man from the manner in which the conversation was conducted. The wounded man and the appellant were both Hakkas but a Hakka detective, who was present and understood Mandarin, stated that when she spoke to the wounded man he heard what she said and that she spoke in Mandarin; he repeated her words.

The appellant gave evidence on her own behalf. The gist of her defence, as disclosed in her evidence, was that these two Chinese men had appeared at the house at about four p.m. that day; that she did not know them previously; and that they asked for water; that she gave them water and then the police arrived. Both the Assessors found the appellant guilty of the offence charged and the learned trial Judge agreed with them. The only question which arises on this appeal is whether or not evidence of the words alleged to have been spoken by the appellant ought or ought not to have been admitted. The only prosecution evidence of the words is that of the detective because no one else present understood them. He said that she addressed the wounded man as follows "Tai Kuai, you have been shot by the Police and I have been arrested — good-bye". The appellant, in her evidence, denied this. She says that the wounded man spoke to her first saying "I am very unlucky to have been shot"; that she replied saying: "You deserve death" and that this conversation took place in Hakka.

The learned trial Judge referred in his summing-up to the statement as deposed to by the detective and pointed out to the Assessors that if it were true it showed that the appellant not only recognised the man, Tai Kuai, but also knew his name. And in dealing with the appellant's defence he again referred to this part of the evidence as showing that, if true, she knew the man quite well in spite of her evidence to the effect that she had never seen him before. There is no doubt that at the time the appellant spoke to the wounded man she was in the custody of the police. The question therefore arises whether her statement comes within the definition of "confession" contained in sub-section (2) of section 17 of the Evidence Enactment.

In deciding what amounts to a confession and what does not, very little assistance can be derived from the English authorities because statements of any kind made to the police in England by accused persons are admissible provided they have not been obtained by improper means. The Indian authorities are of no assistance because sub-section (2) of our section 17 does not form part of the Indian Evidence Act, so that in India the word "confession" has been held to bear its ordinary everyday meaning of an admission of guilt.

Sub-section (2) of our section 17 reads as follows :—

"A confession is an admission made at any time by a person accused of an offence, stating or suggesting the inference that he committed that offence."

It is quite clear from the words "or suggesting the inference" that something short of a full admission of guilt by the accused may yet be a "confession" within the definition. Whether, therefore, any particular statement amounts to a confession or not must depend upon the particular wording of the statement, the circumstances in which it is made and the charge to which the statement directly or indirectly refers.

It seems to us that the words of the statement here in question, although innocent enough in themselves, when taken in conjunction with all the surrounding circumstances might be said to suggest the inference that the appellant committed the offence. The question whether the words of that statement might thus amount to a confession under section 17 (2) of the Evidence Enactment was not considered by the learned trial Judge. The Deputy Public Prosecutor who argued the appeal failed to satisfy us that the words of this statement did not in the circumstances amount to a confession and therefore not being satisfied on this point we hold they should not have been admitted in evidence.

It remains to consider what effect, if any, the admission of this statement may have had upon the minds of the Assessors and upon the result of the trial. There was clear evidence that the appellant was found in the company of two armed men; that she was so found in an isolated squatter's hut; and that one of them was wearing his arms so conspicuously that no one in his company could have failed to know that he was armed. In addition to this, there was the evidence of the Assistant Superintendent of Police to the effect that the appellant obviously knew the wounded man. This by itself might not be convincing, since he did not understand the language used, but there is also the evidence of the detective, which was clearly believed, that the appellant, who was a Hakka of the squatter type, spoke to the wounded man, who was also a Hakka of the same type, in Mandarin and we think that evidence of the facts that she spoke to him first and that she spoke in Mandarin was admissible, even if evidence of the words spoken was inadmissible. The latter point is particularly significant, in the peculiar circumstances of this case, because it is admitted that the appellant can speak some Mandarin and she was a total stranger to the detective. The evidence of the Assistant Superintendent of Police together with the evidence of the detective that she spoke in Mandarin indicate so strongly that the appellant was in fact acquainted with the wounded man that evidence of the actual words spoken add little to the prosecution case. In our opinion, therefore, this is a case in which it is proper to invoke the proviso to section 27 of the Courts Ordinance, 1948 which gives us power, notwithstanding that in our opinion the point raised might be decided in favour of the appellant, to dismiss the appeal if we consider that no substantial miscarriage of justice has occurred. We are of opinion that no substantial miscarriage of justice did occur in this case by reason of the admission of the statement above referred to and we accordingly dismiss the appeal.

Appeal dismissed.

SIM KEE TONG v. REX

[A. Cr. J. (Murray-Aynsley C.J. and Gordon Smith J.) November 18 and 23, 1949]

[Singapore — Magistrate's Appeal No. 135 of 1949]

Practice Direction — Criminal trial — Reasonable opportunity of obtaining services of counsel — Fixing day for hearing.

Any trial where the accused is deprived of a reasonable opportunity of obtaining the services of counsel will of necessity be regarded as mistrial. To secure this the day of hearing should not be fixed at too early a date.

MAGISTRATE'S APPEAL.

The appellant was charged that he on or about September 12, 1949, at Aljunied Road, Singapore, pretended to hold the office of a Detective as a Public Servant, and in such assumed character did ask one Baba bin Hj. Suki to produce his identity card under colour of such office, an offence punishable under section 170 of the Penal Code. He was arrested and charged on the following day, September 13; bail was granted and the case postponed to September 24, and then on October 1, it was transferred to the 1st District Court when it was mentioned and set down for trial on October 10.

The appellant had engaged on October 8 an advocate to appear for him and the case came on for